obligations have been repeatedly broken or not performed and I consider it reasonable that the landlord should recover.

The defendant must yield possession of No. 1 Joo Chiat Road, on the last day of June, 1949, being the expiration of the month commencing next after the delivery of this judgment. He must pay rent at the statutory rate up to the date of vacation.

I will hear argument as to costs.

Judgment for Plaintiff.

REX v. TEO CHENG LIAN.

REX v. LECK KWEE SER.

[App. Crim. Juris. (Gordon-Smith, J.) May 31, 1949]

[Singapore — Magistrate's Appeals Nos. 31 & 34 of 1949]

Criminal Procedure Code — Appeal — Sentence — Increasing Sentence on Appeal.

These two appeals were appeals by the Deputy Public Prosecutor against the sentences passed by the learned Magistrate on the grounds that a sentence of a fine only is inadequate as a deterrent to bribery and corruption.

Held, (1) that there must be a manifest error, either in law or in considering the facts and circumstances of the case or an omission to consider such facts and circumstances, before the appeal Court will interfere with the discretion undoubtedly vested in the Lower Court, (2) that in these cases the learned Magistrate had failed to take into consideration the fact that bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body, and as the mere imposition of a fine is unlikely to act as a deterrent in this class of offence, the sentences in this case must be altered to sentences of imprisonment.

Cases referred to :—

(1) *Kurt Huessener and John Schroeder* 6 C.A.R. 173.

(2) *Gumbs Case* 19 Cr. App. R. 74.

(3) *Withers* 25 Cr. App. R. 53.

APPEALS FROM MAGISTRATE.

A. D. Farrell (D. P. P.) for the Crown.

Accused in person.

Gordon-Smith, J. : — In these two cases the D.P.P. appeals against the sentences passed by the learned Magistrate on the grounds that a sentence of a fine only is inadequate as a deterrent to bribery and corruption.

In the first case, Teo Cheng Lian was convicted on two charges (a) in assisting in the carrying on of a Public Lottery, namely, Chap Ji Kee, and (b) abetment of illegal gratification to a Detective Corporal. He was fined $300/- on the first charge and $50.00 on the second.

In the second case Leck Kwee Ser was fined a similar amount of $50/- for abetment of illegal gratification to a Registration Clerk.

The facts are relevant and very briefly are as follows: In the first case when being stopped for examination of his Registration Certificate, Chap Ji Kee tickets were also found on the accused and he handed $40.00 to the Police with the request for help. He pleaded guilty to the first offence but not guilty to the 2nd, but was convicted.

In the 2nd case the accused pleaded guilty. He was applying for a duplicate registration certificate over which there was some slight difficulty and prospective delay and the accused handed the clerk $4.00 presumably for his assistance in and to expedite the matter.

In both cases the learned Magistrate stated that he had taken into account the custom in Asia and particularly amongst Chinese, of people offering gifts in return for favours received or anticipated; from a gift without conditions to a bribe was a small step; that both accused were first offenders and that in both cases there was neither deliberation nor premeditation.

No question arises as to this Court being competent to enhance or reduce a sentence on an appeal, whether the appeal is as to sentence or conviction only, the point being as to when the Court should exercise such power. In England, the Court of Criminal Appeal only has such power of enhancement when the sentence itself is appealed against and the accused has to be warned specifically of the possibility of such enhancement before proceeding with his appeal. The only bribery and corruption case that I have been able to find is that of *Kurt Huessener and John Schroeder*[1] in which the appellants had been sentenced on several charges to 6 months and 4 months respectively, concurrently, and had appealed in this respect. In this case the Court stated that there was no error in point of law by the learned trial Judge and that "it is impossible for us to say that the offences were only slight or trivial." "It was eminently a matter for his discretion." This case was not one of bribery of public servants or officials.

In Gumbs Case[2], the Lord Chief Justice said :—

> Two principles from time to time have been mentioned in this Court, and in some cases they may have to be considered together. One is that this Court never interferes with the discretion of the Court below merely on the ground that this Court might have passed a somewhat different sentence; for this Court to revise a sentence there must be some error in principle. Secondly, when a man has committed serious offences and has served long terms for them, it is not required that he should suffer

further severe punishment for a later offence which does not intrinsically call for it.

Another case of some relevance is that of *Withers*[3], in which a sentence of 4 years penal servitude had been passed, due to the prevalence of the crime (Receiving) in the particular locality and a deterrent sentence being necessary. The Court of Criminal Appeal's Judgment stated :—

> That is a proper consideration so long as it does not result in a convicted man being made the scapegoat of other people who have committed similar crimes but have not been caught and convicted.

In my opinion it is necessary to examine the facts and circumstances of each individual case. Normally the appeal Court should not interfere with the discretion of the Court below in regard to sentences and I agree entirely with the principles enunciated in *Gumbs Case*[2] that I have referred to. A lower Court is more in touch with the local affairs and daily comings and goings of the greater part of the community than is the High Court and is, in my opinion, in a better position to exercise a discretion in the matter of sentences, more particularly in respect of minor offences and breaches of the law that are almost of daily occurrence. Such sentences should not, in my opinion be interfered with by a higher Court, merely because the individual presiding in the higher Court might, having personal views on the matter, have passed a different sentence.

There must be a manifest error, either in law or in considering the facts and circumstances of the case or an omission to consider such facts and circumstances, before the higher Court interferes with the discretion undoubtedly vested in the lower Court.

I agree with the learned Magistrate that in both cases, the offenders were first offenders and that in neither case was there deliberation or premeditation. I also agree with him as to the local custom and that from an unconditional gift to a bribe is a small step. But in my opinion there is the world of difference between a gratification, illegal or otherwise, as between business firms and a gratification to a Government or public servant carrying out official duties when such gratification is obviously meant to influence such public servant in carrying out, or in refraining from carrying out, his official duties. The maximum punishment for such an offence is 3 years' imprisonment and/or a fine.

Bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body as, I conjecture, is illustrated by recent events in China. Operative treatment at the commencement may or may not be a cure but it is worth trying. Like Caesar's wife, officials, (including Judges) must be above suspicion and lack of confidence in this respect strikes at the whole foundation of good Government.

In my opinion the learned Magistrate failed to take these matters into consideration and I therefore feel justified in varying the sentences passed by him. In doing so, I take into consideration the other matters quite rightly mentioned by him and the facts and circumstances of each case but even so, I do not think that the mere imposition of a fine is likely to act as a deterrent in this class of offence.

Leck Kwee Ser will go to prison for one month's R.I. and Teo Cheng Lian to prison for 2 months' R.I. Confiscation of the respective bribes are confirmed. Fines imposed and paid to be returned.

Order Accordingly.

IN THE ESTATE OF YEOW KIAN KEE (DECEASED); ER GEK CHENG v. HO YING SENG.

[Orig. Civil Juris. (Murray-Aynsley, C.J.) June 28, 1949]

[Singapore — Probate No. 337 of 1948]

Chinese Marriage — Plurality of marriage — Legal requirements for Chinese marriage — Consensual conception of marriage.

The question for decision in this case was whether the plaintiff was one of the widows of Yeow Kian Kee (deceased). The Plaintiff claimed to be a t'sip of the deceased.

Held, (1) that by the law of the Colony a male Chinese, not a Christian, who is domiciled in the Colony can have an unlimited number of t'sips; (2) that for the legal requirements of a marriage with a t'sai or a t'sip, the law of the Colony merely requires a consensual marriage, that is, an agreement to form a relationship that comes within the English definition of marriage, a relationship which need not be life long but must be one of indefinite duration; (3) that the requirements of a ceremony, of a formal contract and of repute of marriage are evidentiary only and not essential to the acquisition of the status of a t'sip; (4) that on the facts of this case, the plaintiff had acquired the status of a t'sip.

Cases referred to :—

(1) *Queen v. Millis,* 10 Cl. and F. 534.

(2) *The Six Widow's Case,* 12 S.S.L.R. 120.

PROBATE SUIT.

Philip Hoalim for Plaintiff.

P. J. Johnson and *R. Boswell* for Defendant.

Murray-Aynsley, C. J. : — The question to be decided in the present proceeding is whether Er Gek Cheng is one of the widows of Yeow Kian Kee. To decide this question of fact an issue was, by an Order dated August 27th last, directed to be tried, to proceed